

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAKTI HOTELS INC.,
Plaintiff,

v.

KHURRUMM CHOUDHRY,
Defendant.

Case No. 23-cv-03560 NC

**ORDER TO DEFENDANT TO
SHOW CAUSE WHY CASE
SHOULD NOT BE REMANDED
BACK TO STATE COURT FOR
LACK OF FEDERAL SUBJECT
MATTER JURISDICTION**

Re: ECF 1

Defendant Khurrumm Choudhry¹ removed this unlawful detainer case to this court from Santa Clara County Superior Court on July 18, 2023. ECF 1. This Order requires the Defendant to “show cause” by filing a written response by September 15, 2023, explaining why the case should not be remanded back to Superior Court due to a lack of federal subject matter jurisdiction.

The federal courts are courts of “limited jurisdiction” and only have jurisdiction as authorized by the Constitution and Congress. *Owen Equip. & Erection Co. v. Kroger*, 437

¹ The Complaint spells Defendant’s first name as “Khurrum.” The Notice of Removal spells it “Khurrumm.” ECF 1. The Court will use Defendant’s spelling and intends no disrespect. There is also inconsistency as to whether plaintiff is “Shakti” or “Shakki.”

U.S. 365, 374 (1978). The party seeking to invoke federal court jurisdiction has the burden of establishing that federal subject matter jurisdiction exists. *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). The Court must presume a lack of jurisdiction until the party asserting jurisdiction establishes otherwise. *Id.* Doubts as to removability are resolved in favor of remanding the case back to state court. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

Here, Choudhry asserts that removal is based on federal question jurisdiction. “Federal question” jurisdiction is assessed under 28 U.S.C. § 1331. The federal district courts have jurisdiction “of all civil actions arising under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331. A case “arises under” federal law if a “well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Empire Healthcare Assur., Inc. v. McVeigh*, 547 U.S. 677, 689-90 (2006) (citations omitted). It is not sufficient for removal purposes if a federal question may arise as a defense or counterclaim. *Rivet v. Regents Bank of Louisiana*, 522 U.S. 470, 475 (1998).

Here, the removal notice asserts that the unlawful detainer was driven by religious discrimination, which violates the Federal Fair Housing Act. ECF 1 at 3. But the face of the well-pleaded complaint does not show a federal issue. In sum, there does not appear to be a substantial question of federal law that is implicated by plaintiff’s complaint.

A second deficiency of the removal notice is the timing of removal. Generally, the notice of removal must be filed within 30 days after the receipt by the defendant of a copy of the initial pleading. 28 U.S.C. § 1441(b). Here, Choudhry removed on July 18, 2023. The removal notice does not specify when Choudhry received the complaint or summons. But the attached complaint in ECF 1-1 shows a filing date of May 23, 2023, suggesting that the removal was not timely.

In conclusion, defendant has not established that federal subject matter jurisdiction is satisfied and the removal was timely. This Order requires the defendant to “show cause”

1 by filing a written response by September 15, 2023, explaining why the case should not be
2 remanded back to Superior Court. Defendant is cautioned that an order remanding the
3 case may require payment of just costs and any actual expenses, including attorney fees,
4 incurred as a result of the removal. 28 U.S.C. § 1447(c).

5 Finally, the Court informs defendant that the Federal Pro Se Program at the San
6 Jose Courthouse provides free information and limited-scope legal advice to pro se
7 litigants in federal civil cases. The Federal Pro Se Program is available by appointment and
8 on a drop-in basis. The Federal Pro Se Program is available by calling (408) 297-1480.

9 **IT IS SO ORDERED.**

10
11 Dated: August 21, 2023



NATHANAEL M. COUSINS
United States Magistrate Judge